form the basis of such an action.[17] A gross overvaluation, however, raises a presumption of fraud, and shareholders must pay the full par value at the instance of creditors unless they can rebut it, even though the corporation itself could not have enforced payment.[18]

The property of a corporation, solvent or insolvent, bears identically the same relation to the creditors of the corporation as the property of an individual or partnership bears to the creditors of such individual or partnership. It is impressed with a trust character, only under the same circumstances and under the same conditions as would be the property of an individual or partnership. An individual, not in debt, can give his property away, provided that he does not intend to defeat future creditors. So also can a partnership under similar circumstances give its property away, and, in the absence of charter restrictions, the same thing would be true of a corporation. The remedy against a corporation, in such cases, rests upon precisely the same ground as does the remedy against an individual or partnership. And the basis of this remedy is not that the assets are held in trust for the benefit of creditors but rather that a fraud is perpetuated upon the creditors, against which equity will give relief, as readily to the creditor of a corporaton as to the creditor of an individual or partnership. When chancery once takes hold it will administer the property for the benefit of all the creditors before it; and in this way the court becomes a sort of trustee *sub modo,* but not with reference to the character of the estate.

THE EXTENT TO WHICH A JUDGMENT OR DECREE VALID IN ONE STATE WILL BE DENIED VALIDITY IN OTHER STATES OF THIS UNION.—The operation of every judgment must depend upon the power of the court to render that judgment.[1] From this it follows necessarily that when it is sought to enforce in one country the judgment of the court of another, the court of the country in which the foreign judgment is to be enforced has the right to determine whether the foreign tribunal pronouncing the judgment had lawful jurisdiction. From this elementary principle has resulted the rule of international law, that in order to found a proper ground of recognition of any foreign judgment in another country, it is necessary first to establish that the court pronouncing the judgment had lawful jurisdiction over the cause, the subject-matter and the parties.[2] This rule is applied, of course, only to those judgments to which it is desired to give extraterritorial effect, and affects in no

[17] Coit *v.* Gold Amalgamating Co., 119 U. S. 343; Bank of Fort Madison *v.* Allen, 129 U. S. 372.

[18] Hastings Malting Co. *v.* Iron Range Brewing Co., 65 Minn. 28, 67 N. W. 652.

[1] Rose *v.* Himely, 4 Cranch 241.

[2] Rose *v.* Himely, *supra;* Roth *v.* Roth, 104 Ill. 35.

way the validity of a judgment locally which meets the jurisdictional requisites of the territorial law.[3]

Assuming that a court of the foreign state has jurisdiction according to the principles of international law, so that some force must be given the judgments in other states, the very important question arises as to *what* force and effect is to be given to the foreign judgment in such other states.

Whether the foreign judgment should be held conclusive upon the merits or whether it should be open to re-examination upon the original merits, are questions upon which there has been much diversity of opinion as well as of practice. It was to prevent these latter perplexing questions from arising as between the states of this union, it is believed, that the "full faith and credit" clause was embodied into the Federal Constitution. In choosing between these two alternatives—the conclusive or the prima facie effect of a judgment of another state, the Constitution has provided that, "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."[4] Congress is empowered by the same section to prescribe by general law the manner in which such acts, records and judicial proceedings shall be proved, and the effect thereof. Accordingly, Congress has passed an act[5] which, after prescribing the manner in which the authentication may be made, provides that, "the said records and judicial proceedings so authenticated shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from which they are taken."

In construing these provisions the Supreme Court of the United States has established by a long line of decisions that a final judgment or decree pronounced by a court of competent authority, having jurisdiction of the parties, of the subject-matter and of the cause, is, for the most part, *conclusive* in every other court in the United States.[6] However, the judgment of a state court is not to be regarded as a domestic judgment in the courts of the other states or of the United States in the sense that execution may issue thereon in such other state without the necessity of a suit on the judgment, or that it enjoys the same right of priority, privilege, or lien which it has in the state where it is pronounced.[7] Nor are the provisions under consideration merely declaratory of the faith and credit to which the judgment of one state in entitled in another by the comity of nations; but the intention seems to have been, as expressed by Mr. Justice Story in his treatise on the Constitution, and as the adjudicated cases, in effect, hold, "to give them a more conclusive

[3] See D'Arcy *v.* Ketchum, 11 How. 165; Bissell *v.* Briggs, 9 Mass. 462.
[4] United States Constitution, art. iv, § 1.
[5] Act May 26, 1790, Act March 27, 1804, 1 Stat. L. 122, 2 Stat. L. 299, U. S. Comp. Stat., § 905.
[6] Christmas *v.* Russell, 5 Wall. 290; Insurance Co. *v.* Harris, 97 U. S. 331; Sistare *v.* Sistare, 218 U. S. 1.
[7] M'Elmoyle *v.* Cohen, 13 Pet. 312; D'Arcy *v.* Ketchum, *supra.*

efficiency approaching to, if not identical with, that of domestic judgments; so that, if the jurisdiction of the court be established, the judgment shall be conclusive as to the merits." [8]

But this does not prevent an inquiry by the court of the state in which it is sought to enforce the judgment of another state into the international jurisdiction of the tribunal pronouncing the judgment, nor an inquiry into the right of the state to assume jurisdiction over the parties or over the subject matter; nor does it prevent an inquiry whether the judgment is obtained through, and therefore, impeachable for, a manifest fraud.[9] It seems then, that as between the states of this union, the *international* requisites of jurisdiction are applied in determining whether *any* effect shall be given the judgments and decrees of another state; and that the "full faith and credit" clause of the Constitution finds application only in determining *what* effect shall be given, *i. e.*, whether conclusive or prima facie. It would seem also to follow that, though the judgment of a state may not receive full faith and credit in another state because the jurisdictional facts upon which the judgment is based do not comply with the international requisites, yet that judgment may be valid and enforceable domestically under the territorial law.[10]

Before the adoption of the "due process of law" clause by way of amendment to the Constitution, the judgments of the courts of a state might be enforceable domestically and yet not be given effect extraterritorially because the *international* requisites of jurisdiction were not complied with. However, after the embodiment into the Constitution of the Fourteenth Amendment, providing, "nor shall any state deprive any person of life, liberty, or property, without due process of law," this unfortunate state of affairs was in large measure obviated. This constitutional provision is a part of the municipal law of each state, operating intraterritorially upon domestic proceedings. The rules of private international law, on the other hand come into play only when the inquiry extends to the effect to be given in one state to the judicial proceedings of another. But the Fourteenth Amendment and the rules of private international law "both unite in declaring that, in order to a valid exercise of jurisdiction by a tribunal, there must be given to a defendant a reasonable notice and opportunity to defend himself; there must be 'due process of law.'" [11] Therefore, in so far as the "due process of law" clause is applicable, a judgment which is valid in the state where it is rendered is entitled, for the most part, to full faith and credit in every other court in the United States.

"The due process of law" clause, however, applies only to cases involving life, liberty or property; and as questions of status, such as divorce, do not fall within this category, this clause would have no application to them. As to such questions, therefore, the juris-

[8] See 2 STORY, CONST., 5th ed., §§ 1309, 1310.
[9] Bissell *v.* Briggs, *supra;* D'Arcy *v.* Ketchum, *supra.*
[10] See note 3, *supra.*
[11] MINOR, CONFL. L., § 86.

dictional requisites of international law must be applied in determining whether or not the judgments and decrees of one state shall be given full faith and credit in another state.[12]

APPROXIMATE CAUSE.—In order to constitute an actionable wrong, it is not only requisite that damages be suffered, but the damages must be the legitimate consequence of the thing amiss. In law the immediate and not the remote cause of any wrong is regarded, and no action will lie for damages which do not flow proximately from the act complained of.[1] This principle is of the highest importance; since the right of action in many cases and the extent of recovery in others depend upon it.

Causes of legal injury may be divided into two classes: first, those acts or omissions which are wanton or willful violations of the law and are therefore wrongful in themselves;[2] second, those causes which are not in themselves distinct legal wrongs but which become wrong and by reason of this fact give rise to a right of action in favor of the person sustaining injury as a proximate result of the wrongful act.[3] The first class divides itself into two heads: first, those wrongs which in their inception constitute an invasion of the rights of the particular person injured;[4] second, those wrongful acts or omssions which are willful violations of the law, but which do not in themselves originally interfere with the rights of the complainant.[5] If the original act invaded the rights of the person complaining, the law will presume that the damage followed as the natural, necessary and proximate result.[6] Hence this class of cases can be disposed of without further discussion; because here the invasion itself fixes the right of action to the person complaining, and he is entitled to a recovery *per se,* though the damages suffered may be nominal. But if the original and wrongful act or omission complained of in itself interfered with no rights of the complainant, but was merely in violation of some law, the complainant must not only show damages resulting to him from the act or omission, but he must show, in addition, that the damages resulted proximately therefrom.[7] In such cases, recovery is allowed, not on

---

[12] See Haddock *v.* Haddock, 201 U. S. 562; Cook *v.* Cook, 56 Wis. 195, 14 N. W. 33, 43 Am. Rep. 706.

[1] See Stone *v.* Boston & A. R. Co., 171 Mass. 536, 51 N. E. 1, 41 L. R. A. 794. An insurance company has no right of action against a person who wrongfully caused the death of the person insured by it for the loss thereby caused the company, such loss being too remote and indirect. Mobile Life Ins. Co. *v.* Brame, 95 U. S. 754.

[2] Scott *v.* Shepherd, 3 Wills. 403, 2 Black. W. 892.

[3] Poeppers *v.* Missouri, etc., R. Co., 67 Mo. 715, 29 Am. Rep. 518.

[4] Ricker *v.* Freeman, 50 N. H. 420, 9 Am. Rep. 267; Tremain *v.* Cohoes, 2 N. Y. 163, 51 Am. Dec. 284.

[5] Scott *v.* Shepherd, *supra;* Vandenburgh *v.* Truax, 4 Denio (N. Y.) 464, 47 Am. Dec. 268.

[6] See Ricker *v.* Freeman, *supra;* Tremain *v.* Cohoes, *supra.*

[7] Vandenburgh *v.* Truax, *supra.*